IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 13TH SEPTEMBER 2007 / 22ND BHADRA 1929

Crl.Rev.Pet.No. 2317 of 2003()

CRA.189/2001 of SESSIONS COURT, MANJERI
ST.836/1998 of JUDL. MAGISTRATE OF FIRST CLASS, MALAPPURAM

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REVN. PETITIONER: APPELLANT /ACCUSED

P.A.SUBRAMANIAN, S/O.AYYAPPAN,
SREE VALSAM, SECTOR 8,
UDAYA NAGARAM, AYYAMTHOLE,
THRISSUR DISTRICT.

BY ADV. SRI.P.VIJAYA BHANU
SMT.P.MAYA

RESPONDENTS: RESPONDENTS/RESPONDENTS/COMPLAINANT AND STATE

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1. DR.K.BALAKRISHNAN,
S/O.NARAYANAN VAIDYAR,
LAKSHMI NIVAS,PULAMANTHOLE

2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSUECUTOR,
HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.S. SIVAKUMAR
SRI.RAJIT
SRI.RANJIT BABU
SRI.G.SREEKUMAR (CHELUR)

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 13/09/2007, ALONG WITH CRRP NO. 3069 OF 2003 CRRP NO. 3267 OF 2003 CRRP NO. 2758 OF 2004 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

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Crl.R.P. Nos. 2317/03, 3069/03, 3267/03 AND 2758 OF 2004

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Dated: 13th September 2007

ORDER

The common revision petitioner in these revisions was the Managing Partner of a partnership firm by name "Mahasudarsanam Corporation". The revision petitioner was prosecuted by four of the depositors to whom the revision petitioner had on behalf of the firm issued cheques for the maturity amount in respect of deposits made by them. Crl.R.P. 2317 of 2003 arises out of S.T. 836/1998 on the file of the J.F.C.M., Malappuram, Crl.R.P. 3069 of 2003 arises out of S.T. No. 1312/1998 on the file of the J.f.C.M., Pattambi, Crl.R.P. 3267/2003 arises out of S.T. No. 6555 of 1998 on the file of J.F.C.M., Malappuram and Crl.r.P. 2758 of 2003 arises out of S.T. 4778/1997 on the file of the J.F.C.M., Chittur. The cheque amount involved in Crl. R.P. 2317/03 is Rs. 18,000/-, in Crl.R.P. 3069/2003 is Rs.36,400/-, in Crl.R.P. 3267/2003 is Rs. 4,05,000/- and in Crl.R.P. 2758 of 2003 is Rs. 19,170/-. Both the courts below have concurrently entered the conviction against the revision petitioner for the offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881. The sentence passed in S.T. 836 of 1998 is simple imprisonment for one

month and to pay a fine of Rs. 5,000/- and on default to pay the fine to suffer simple imprisonment for 15 days. The sentence imposed in S.T. 1312 of 1998 was simple imprisonment for three months and to pay a fine of Rs. 30,000/- and on default to pay the fine to undergo simple imprisonment for three months. The sentence in Crl.R.P. 3267 of 2003 was simple imprisonment for three months and to pay a fine of Rs. 5,000/- and on default to pay the fine to suffer simple imprisonment for one month. The sentence imposed in S.T. 4778/1997 was simple imprisonment for six months and to pay fine of Rs. 3,000/- and on default to pay the fine to suffer simple imprisonment for 15 days.

2. Eventhough the learned counsel appearing for the common petitioner assailed the conviction recorded, the same cannot be dislodged as the conviction was entered by the courts below after an evaluation of the oral and documentary evidence in the case. this court sitting in revision will be loathe to interfere with the conviction recorded against the revision petitioner. The conviction is accordingly confirmed.

3. What remains for consideration is the question of adequacy or otherwise of the sentence imposed on the revision petitioner. Consequent on a contention raised by the petitioner that

insolvency proceedings have been initiated against Mahasudarsanam Corporation of which the revision petitioner was the Managing Partner, insolvency proceedings are pending before the Special Court, Thrissur in I.P. 8 of 1998 and that the entire assets of the firm have been directed to be vested in the Official Receiver and that the Official Receiver alone can satisfy the monetary part of the judgment, the Official Receiver was impleaded as the addl. 3rd respondent in these cases. The Officer Receiver has filed a counter stating that if the liability of the revision petitioner is not his personal liability and that the cheque amounts are directed to be paid by the Official Receiver that will have an adverse effect of the body of creditors who have been impleaded in I.P. 8 of 1998 on the file of the Special Court, Thrissur.

4. It may be true that the sentence which has been passed by the courts below is on the revision petitioner and not on the Official Receiver and that the liability to pay the cheque amount is essentially on the revision petitioner. But it is futile to contend that the liability of the revision petitioner is a personal liability. It was really a liability of the firm the assets of which have come to vest on the Official Receiver who alone can represent the firm in all proceedings. Under these circumstances, the Official Receiver will be the proper person to discharge monetary liability of the firm arising out of the cheques in

question. Accordingly, the Official Receiver in I.P. No. 8 of 1998 on the file of the Special Court, Thrissur who has been impleaded as Addl. 3rd respondent is allowed to deposit the respective cheque amounts namely, Rs.18,000/-, Rs. 4,05,000/-, Rs. 36,400/- and 19,170/- respectively before the trial court within four months from today. Each of the said amounts shall be treated as compensation under Sec. 357 (3) Cr.P.C. It is made clear that this shall not constitute a precedent to any other creditor of the aforesaid firm to claim amounts from the assets vested in the Official Receiver.

These Crl. Revisions are disposed of as above.

V. RAMKUMAR,
(JUDGE)

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